IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 291 OF 2003
WITH
CIVIL APPLICATION NO. 433 OF 2003

Sou. Mumtaz Abdulkarim Bepari ..Appellant

Vs.

Shri Abdulkarim Ghudulal Bepari
and ors. ..Respondents

Mr. V.B. Rajure for appellant.

CORAM: B.H. MARLAPALLE, J.

Date : April 10, 2007.

P.C.:

1. Heard Mr. Rajure the learned counsel for the appellant-defendant no.1.

2. This second appeal arises from the decree of Conjugal Rights passed by the learned Civil Judge, Junior Division, Kolhapur dated 18/4/1998 in favour of the plaintiff-husband in R.C.S. No. 1094 of 1992 and duly confirmed by the learned 4th Additional District Judge at Kolhapur by his Judgment and Order dated 21/1/2003. Notice before admission was issued by this

court on 8/4/2003 with a belief to make the parties settle the matrimonial dispute, but during the last four years or so nothing further has progressed nor Mr.Rajure has received any instructions from the appellant-wife, who was impleaded as defendant no.1.

3. The husband had approached the trial court for restitution of conjugal rights under Section 281 of the Mohammedan Law and on the basis of the evidence adduced by both the parties and their respective averments, the trial court held that the defendant no.1-wife willfully avoided to co-habit with the plaintiff-husband, defendant-wife failed to prove that the plaintiff-husband had ill-treated her on account of demand of money and, therefore, the plaintiff-husband was entitled for a decree of restitution of conjugal rights as prayed. Being dis-satisfied with the said decree the defendant No.1-wife along with her parents filed Civil Appeal No. 257 of 1998 and the learned Additional District Judge reappreciated the evidence and held that the plaintiff-husband had discharged the initial burden laying on him to prove that the defendant-wife had

deserted him without any just cause and the defendant no.1-wife could not establish any instance of cruelty caused to her at the hands of the plaintiff-husband and, therefore, the husband was entitled for the decree. Both the courts considered the notice issued by the plaintiff-husband at Exh.19 as well as the judgment in Criminal Misc. Application No.55 of 1992 at Exh.25 which was relied upon by the defendant no.1. But in her depositions before the trial court the defendant no.1-wife admitted in unequivocal terms that she was not desirable in raising marital relations with the plaintiff and that the husband had come to her parents' house to take her back but she refused to go home and co-habit. She admitted that now she had no love and affection towards the plaintiff and that she had left the house of the plaintiff under the pretext of ill-treatment for which there was no instance to support. This defence of ill-treatment was only taken by way of an after thought to defeat the suit under Section 281 (2) of the Mohammedan Law. But both the courts rightly held that the wife could not discharge her burden that she was subjected to any ill-treatment or cruelty.

4. Hence, this second appeal does not involve any other substantial question of law and, therefore, the same must fail at the threshold.

5. Appeal is dismissed.

6. Civil Application No.433 of 2003 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)